



August 23, 2021

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

***RE: Proposed Transfer of Control of TracFone Wireless, Inc. to Verizon
Communications Inc., GN Docket No. 21-112***

Dear Ms. Dortch:

On August 19, 2021, Sarah Morris, Joshua Stager, and Amir Nasr of New America’s Open Technology Institute (“OTI”) and Yosef Getachew and Jonathan Walter of Common Cause met via phone with Acting Chairwoman Jessica Rosenworcel’s Acting Chief Legal Advisor Umair Javed and Acting Legal Advisor for Wireless and Public Safety Ethan Lucarelli. During the call, the parties discussed Verizon’s proposed acquisition of TracFone from América Móvil. OTI and Common Cause continue to have serious concerns about the transaction’s potential to undermine the Lifeline program and raise prices for low-income consumers.

OTI and Common Cause emphasized that Verizon has a burden to demonstrate that the merger will benefit the public interest—not merely that it would avoid harm. The conditions recently proposed by Verizon and outside parties¹ reflect a recognition of this burden and of the plausible concern that the merger could inflict competition and equity harms. At a minimum, the proposed conditions should be seen as the floor, not the ceiling, for any potential remedy the Commission might be considering. Accordingly, OTI and Common Cause discussed several areas of concern about possible remedies.

¹ Ex Parte of Verizon Communications, GN Docket No. 21-112 (Aug. 11, 2021), (“Verizon ex parte”); Letter of Public Knowledge et al., GN Docket No. 21-112 (Aug. 11, 2021).

First, any conditions must be strictly enforced. Behavioral conditions are notoriously difficult to monitor, and the antitrust community has increasingly looked skeptically upon such remedies.² To the extent the Commission has detected violations in past transactions, it is often because an aggrieved third-party business raised complaints, such as when Comcast was penalized for violating a 2011 merger condition that implicated Bloomberg.³ Given the likelihood that any violation of Verizon/TracFone conditions would only harm low-income consumers and not implicate an aggrieved third-party company, it is imperative that the Commission create strong, independent mechanisms for identifying and responding to violations. The limited reporting that Verizon has proposed is insufficient in this regard. The Commission should appoint an ombudsman or compliance officer who is empowered to proactively monitor the conditions, ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations—particularly from Lifeline subscribers. The Commission mandated a compliance officer in the AT&T/DIRECTV transaction, which offers model language on how to structure such a position.⁴

Second, conditions must be of sufficient duration. Verizon offers a commitment to participate in the Lifeline program—with little detail and some key caveats—for three years following the close of the transaction.⁵ This duration is inadequate. Violations can take years to detect, investigate, and litigate, and Verizon would have a strong incentive to drag out procedural timelines if the enforcement window is three years or less. As a benchmark, even seven-year conditions were seen as insufficient in the Comcast/NBCUniversal merger, prompting former Commissioner Clyburn and Senator Richard Blumenthal to ask the Commission to extend the conditions beyond seven years.⁶

² See, e.g. John E. Kwoka and Diana L. Moss, [Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement](#), American Antitrust Institute (2011).

³ *In the Matter of Bloomberg L.P. v. Comcast Cable Communications*, Memorandum Opinion and Order, MB Docket No 11-104 (May 2, 2012); See also Ex Parte of New America’s Open Technology Institute, WC Docket No. 20-445, GN Docket No. 21-112 (July 22, 2021).

⁴ *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, July 24, 2015, para. 123 (“Given the important role that these conditions serve in securing the public interest benefits of this transaction, we find that compliance with the conditions must be ensured. Accordingly, to ensure that AT&T complies with the conditions of this Order, we require that AT&T retain both an internal company compliance officer and an independent, external compliance officer that will report and monitor, respectively, the combined entity’s compliance in accordance with the terms of this Order”).

⁵ Verizon ex parte at 1.

⁶ Kim Hart, [“Comcast-NBC merger conditions expire, raising anti-competitive fears,”](#) Axios (Jan. 22, 2018); [Letter](#) from Senator Richard Blumenthal to Assistant Attorney General Makan Delrahim (Dec. 13, 2017); Richard Blumenthal and Mignon Clyburn, [“It’s Too Soon to Unleash Comcast,”](#) Bloomberg (Feb. 5, 2018).

Low-income consumers who are impacted by this merger need more than three years of oversight. TracFone is one of the few major providers that still focuses on the low-income segment of the wireless market, as other companies have shifted their business models to a more exclusively affluent customer base. As such, the Commission should seek to ensure the longevity of the Lifeline program, which relies on TracFone as one of its biggest participants, for more than three years. Low-income consumers will still exist in 2024, so there is no compelling reason for the Commission to allow the merged company to abandon them so quickly.

Third, OTI and Common Cause highlighted potential loopholes in Verizon’s proposed conditions. For example, the commitment to refrain from adding new co-pays to TracFone’s Lifeline plans—but only if “the terms of the Lifeline program do not change in a way that materially increases costs or decreases the subsidy”⁷—is a significant loophole that could needlessly complicate the Commission’s efforts to strengthen Lifeline. Additionally, the commitment to participate in Lifeline lacks sufficient detail on the nature of that participation. The commitment to maintain TracFone’s marketing budget also lacks granularity, which raises questions about the extent to which the merged company would continue marketing to non-English speakers or provide necessary customer support. The commitment also fails to mention anything about TracFone’s prepaid customers, leaving the merged company free to raise rates or abandon prepaid customers who have relied on TracFone service for years.⁸ OTI also raised concerns about whether AT&T and T-Mobile would continue supporting TracFone service on their networks if the company came under Verizon ownership. These loopholes demonstrate the difficulty of enforcing behavioral conditions and suggest the Commission should consider a wider scope of remedies, including divestitures.

Finally, OTI and Common Cause expressed broad concern with the ongoing consolidation of the wireless market. After last year’s T-Mobile/Sprint merger, which both OTI and Common Cause opposed, the wireless market went from four dominant players to just three—a critical tipping point after which markets tend to become hopelessly anticompetitive. TracFone is one of the few secondary players that could exert some pricing pressure on the wireless market. Verizon’s acquisition of TracFone could eliminate that pressure and increase wireless prices—and not just for low-income consumers. Given these stakes and TracFone’s integral role in the Lifeline program, the Commission should thoroughly review this transaction and be willing to use every tool at its disposal to protect the public interest.

⁷ Verizon Letter at 1.

⁸ See, e.g., Comments of Glenn Wegner, GN Docket No. 21-112 (July 14, 2021) (“I have been a very happy customer of Tracfone for over 10 years. ... I have not found a more reasonable priced service and phone that meets all my needs. I very much value the low cost of the Tracfone service. Let me point out that this is not Lifeline service ... I believe that Verizon will destroy the low cost service that Tracfone now offers.”).

Respectfully submitted,

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